IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2771 OF 2007

1. Shri Nitin Vasant Dalvi & Ors. .. Petitioners.

V/s.

State of Maharashtra and Anr. .. Respondents.

Mr.A.M.Joshi for the Petitioners.

Mr.V.P.Malvankar, AGP for the Respondents.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.

DATED : 27th APRIL, 2007.

P.C.: (Per R.M.Savant,J.)

. By this petition filed under Article 226 of the Constitution of India, the petitioners have challenged the order dated 1.3.2007 passed by the Schedule Tribe Scrutiny Committee, Pune Region, Pune by which order the caste claim of the three petitioners as belonging to Mahadeo Koli Schedule Tribe, has been rejected. The caste claim of the petitioners was forwarded to the concerned Scrutiny Committee sometime in the year 2002, as the petitioners were desirous of seeking admission in Medical and B.Ed. colleges against the seats reserved for schedule tribes. As per the procedure the Vigilance Cell submitted its report on 16.9.2002 and the

petitioners were given an opportunity to submit their say to the said report. The petitioners filed in all 17 documents in support of their tribe claim as belonging to Mahadeo Koli. After considering the said documents and the information furnished on behalf of the petitioners, the Scrutiny Committee came to the conclusion that the petitioners do not belong to Mahadeo Koli, vide its order dated 12.04.2005. The said order came to be challenged by the petitioners by way of writ petition No. 4148 of 2005 in this court. This court vide its order dated 5.8.2005 remanded the case back to the Scrutiny Committee. After the said remand, the Committee followed due procedure and again vide its order dated 29.3.2006 invalidated the caste claim of the petitioners.

2. The petitioners again filed writ petition No. 5489 of 2006 on the ground that the committee was not property constituted. This court vide order dated 18.10.2006, remanded the case back to the Committee on the ground that the Committee was not properly constituted. On such second remand, the petitioners were called for hearing on 24.01.2007. Father of the petitioners appeared before the Committee and filled in the Sunavani Patrika i.e. the Attendance Sheet, but did not appear before the Committee to submit his oral say.

The committee in the said circumstances, was constrained to proceed to decide the caste claim of the petitioners on the basis of the material before it. In terms of the directions contained in the order of this court dated 5.8.2995, it was to verify the school record in respect of Vasant Narayan Dalvi. The file was handed over to the Vigilance Cell for a detailed enquiry. The statements of the said Vasant Narayan Dalvi, the petitioners' father and the statement of Dnyanoba Bapu Dalvi, the petitioners' cousin grand father were recorded on 13.10.2005 and 11.10.2005 respectively. The Vigilance Cell also procured the birth extract of the petitioners' grand father one Bapu Satu Koli, whose date of birth is recorded as 8.7.1928 and the caste recorded as Koli. The said birth extract was issued by the Tahasildar, Haveli, Dist.Pune on 13.10.2005. The details of the birth extract are reproduced in the order of the Committee, which is presently impugned. As per the procedure, the enquiry report alongwith documents obtained by way of enquiry was sent to the petitioners on 26.10.2005 and the petitioners were directed to submit their written say to the second enquiry report upto 19.12.2005. Accordingly, the petitioners have submitted the written explanation to the Committee on 16.11.2005. The petitioners were, thereafter called for personal hearing alongwith elderly persons from the

family. The petitioners, on the ground that the said letter, asking them to remain present was not received in time, requested for a next date of hearing. The petitioners/ applicants were thereafter called for hearing on 15.02.2006 vide letter dated 31.1.2006. The petitioners vide letter dated 14.2.2006 stated that they have no more documents to submit before the Committee and that they have nothing to say further in the matter. Hence, the Committee proceeded to decide tribe claim of the petitioners.

3. It is trite that the documents dating prior to the passing of the Constitutional Scheduled Tribes Order 1950, have got highest probative values in deciding the social status claim. In the present case, the caste as per the birth record of the petitioners' grand father Narayan Bapu Dalvi, is clearly recorded as Hindu Koli, which pertains to the period of 1928, which is the oldest document on record. The school record of the petitioners father which is of the year 1948-54 is subsequent to the said document. It is significant to note that in the service certificate of the petitioners' grand father name is changed from Koli to Dalvi. Though the petitioners were given an opportunity to submit their say to the Vigilance Cell report, the petitioners have not taken any objection in respect of the said

certificate obtained by the Vigilance Cell. The petitioners in fact did not contest the said certificate. The learned counsel for the petitioners now contends that there is discrepancy in the surname as well as date of birth and therefore, the said document cannot be that of the petitioners grand father. We are afraid that such a contention cannot be accepted by us at this stage when prima facie the document that is a birth extract of the petitioners' grand father obtained by the Vigilance Cell pursuant to the enquiry conducted by it. The petitioners having not contested the said document are now estopped from challenging the order on the said basis. The committee on the basis of whatever information that has been furnished by the petitioners in respect of the traits, characteristics and customs of the community came to a conclusion that it is not associated with that of Mahadeo Koli, Schedule Tribe and that it relates to Koli caste which is included in the list of other backward classes and special backward classes. Even if the community has progressed culturally it does not forget the basic traits, characteristics and customs etc., of the said community. In the instant case the petitioners have failed to prove their affinity test towards Mahadeo Koli Schedule Tribe.

4. As indicated above, the affinity test being of

crucial importance, we cannot find any fault with the said finding of fact of the committee. It would also be useful to refer to the observations made by the Apex Court in the judgment in the case of **Madhuri Patil v/s. State of Maharashtra** (AIR, 1995 Supreme Court -94).

> ".....On the basis of the information furnished by the father of the appellants and the anthropological and ethnology findings in that behalf, the Addl. Commissioner, in our view rightly held that on argument of social mobility and modernisation often he alluringly put forth to obviate the needs to pass the affinity test is only a convenient plea to get over the crux of the question. Despite cultural advancement, the genetical traits pass on from generation to generation and no one could escape or forget or get them over. The tribal customs are peculiar to each tribe or tribal communities and are still being maintained and preserved. Their cultural advancement to some extent may be modernised and progressed but they would not be oblivious to or ignorant of their customary and cultural past to establish their affinity to the membership of a particular tribe".

5. We have perused the order of the committee and its findings. We do not find any illegality or infirmity committed by the Committee in its order, impugned in the present petition. In that view of the matter, no case for interference in the extraordinary writ jurisdiction of this court under Article 226 is made out.

6. Petition is, therefore, summararily dismissed.

(F.I.REBELLO,J.)

(R.M.SAVANT,J.)

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